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**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

**2023/HP/1658**



*(Civil Jurisdiction)*

**BETWEEN:**

**JAMES KALOWA (SUING AS REPRESENTATIVE  
FOR MWALEKA VILLAGE RURAL DEVELOPMENT  
COMMITTEE) AND 8 OTHERS**

**1<sup>ST</sup> TO 9<sup>TH</sup> PLAINTIFFS**

**AND**

**KASUKUZYU LIANDA  
KAFUE TOWN COUNCIL**

**1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT**

**Before the Honourable Mrs. Justice R. Chibbabbuka on the 27<sup>th</sup> May, 2024**

For the Plaintiff: Ms I. Chongo Lamba, Messrs Chongo Manda and Associates

For the Defendant: No appearance

**RULING**

**Cases referred to:**

1. *Turnkey Properties Vs Lusaka West Development Company Limited (1984) ZR 85*
2. *Shell and BP (Z) Limited Vs Conidaris and others (1975) ZR 174*
3. *Gideon Mundanda Vs Mulyani and two others (1987) ZR 29*
4. *Horton Nove Vs Zambia Educational Company Limited (1980) ZR 184*

**Legislation referred to:**

*The High Court Act, Chapter 27 of the Laws of Zambia*

## **1.0 Introduction**

This is an application for an injunction on the part of the plaintiffs filed on 20<sup>th</sup> September, 2023. The injunction is to restrain the defendants from building, evicting, harassing or in any other way interfering with the plaintiff's rights of quiet enjoyment of the subject properties until the determination of this matter or until further order of this court. The said subject properties are known as Plot Numbers 4822, 4830, 4844, 4826, 4842, 4865, 4852 and 4831, Mwaleka Village, Kafue.

## **2.0 The plaintiffs' affidavit in support**

**2.1** The plaintiffs filed an affidavit in support of this application on even date deposed to by the 1<sup>st</sup> plaintiff, James Kalowa wherein he avers as follows:

**2.2** He is the Secretary for the Mwaleka Rural Development Committee. In 2003 he settled on what later became known as Stand 4849 in Mwaleka Village of Kafue District. There were several other persons who had settled on the said piece of land and plot numbers were given to the individuals that had settled there. They agreed to form a Rural Development Committee in order to regularize their respective occupation of the premises.

**2.3** In April, 2011, the 2<sup>nd</sup> defendant advised them that it was re-planning the properties with a view of offering the properties to them as sitting tenants with individual certificates of title to the pieces of land that they were occupying. They were asked to pay surveyors fees to facilitate the same which they did. The 1<sup>st</sup> defendant was not and has never been a sitting tenant in the area and did not participate in this exercise. The Surveyor acknowledged the money that was paid.

**2.4** In October, 2014, they were subsequently offered the properties by the 2<sup>nd</sup> defendant and were asked to pay an average of K3,450.00 as service charges

which they disputed as being excessive. It later transpired that the large amounts that they were being asked to pay came about because the 2<sup>nd</sup> defendant had allocated the plots in the area to persons who were not sitting tenants. Due to various complaints and reports to law enforcement agencies concerning the same, in July 2015 the 2<sup>nd</sup> defendant in a meeting resolved that allocations to persons who were not sitting tenants would be revoked and that the sitting tenants would be given first priority.

**2.5** The 2<sup>nd</sup> defendant carried out a verification exercise regarding which people were occupying the pieces of land and it was established that 20 plots were not occupied by anybody. The 2<sup>nd</sup> defendant made a further resolution to allocate 11 of the vacant plots to other persons and the remaining 9 were given to the community for them to allocate to whomever they, as the committee, saw fit. Whilst they were still waiting for the new letters of offer from the 2<sup>nd</sup> defendant for all the plots that that they were entitled to, contrary to the said resolutions. the 2<sup>nd</sup> defendant, allocated pieces of land to the 1<sup>st</sup> defendant. The extent of these pieces of land covers the interests of other members of the community and the 2<sup>nd</sup> defendant has facilitated, by way of recommendation, the process of issuing a certificate of title to him. The extent of the boundary of the property that has been granted to the 1<sup>st</sup> defendant encompasses the land which belongs to sitting tenants namely Jennifer Sianyinde, Boswell Lung, Mannix Wamuniyima, Mukosha Shapanyika (deceased) Anna Banda, Sipiwe Siziba Mitti and Justin Banda. It also encompasses the plot that was allocated by the committee to Monica Mwape as beneficiary from the 9 other plots.

**2.6** The original map that was used to re-plan the area was disregarded when the recommendation and approval for the certificate of title was granted by the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant. No new letters of offer have been given to the members of the community for their individual pieces of land or for the 9 plots that were ceded to the committee to enable the recommendation and approval by the 2<sup>nd</sup> defendant to issue them with certificates of title.

**2.7** The 1<sup>st</sup> defendant has by virtue of the certificate of title that was wrongly given to him commenced the construction of a wall and other developments in the area which belongs to the affected members of the community. As such the 1<sup>st</sup> defendant is in the process of displacing legitimate sitting tenants and causing the illegal realignment of properties for all other occupants.

### **3.0 The plaintiff's skeleton arguments**

**3.1** The plaintiffs filed skeleton arguments on even date. Reference was made to *Order 29 Rule 1* of the *Rules of the Supreme Court, 1999 Edition* which provides that any party to a cause or matter before or after the trial of a matter may apply for an injunction.

**3.2** Counsel referred to the case of **Turnkey Properties Vs Lusaka West Development Company Limited**<sup>1</sup> where it was held that the possibility of damages being an adequate remedy should always be considered in applications for interlocutory injunctions. The court was also referred to the case of **Shell and BP (Z) Limited Vs Conidaris and others**<sup>2</sup> where it was held that a court will generally not grant an injunction unless the right to relief is clear and unless the injunction is necessary to protect the applicant from irreparable injury as mere inconvenience is not enough. That it was also held in the said **Shell and BP (Z) Limited** case that irreparable injury means injury which is substantial and can never be atoned for by damages and not injury which can possibly be repaired.

**3.3** It was argued by counsel that in *casu*, the plaintiffs are claiming an interest in the plot numbers known as plot 4822, 4830, 4844, 4826, 4842, 4865, 4852 and 4831, Mwaleka Village Kafue, as sitting tenants and beneficiaries which plots were granted by the Mwaleka Rural Development Committee. That the matter hinges on the rights of the plaintiffs to the properties which were confirmed by a formal resolution made by the 2<sup>nd</sup> defendant which instead of

being fulfilled, has been abrogated by the illegal offer of the same properties to the 1<sup>st</sup> defendant in a title deed.

**3.4** Counsel contended that the plaintiffs had shown in their affidavit that the 1<sup>st</sup> defendant is in the process of building structures that have encroached on the properties belonging to the plaintiffs to their detriment and the apprehension is that this will unlawfully displace them. That as such, it has become necessary for the plaintiffs to apply for an injunction as the 1<sup>st</sup> defendant, with the approval of the 2<sup>nd</sup> defendant, is purporting to own the property and is threatening to dispossess the plaintiffs before the matter has been determined by this Court. It was counsel's submission that unless the defendants are restrained by way of an injunction, they will dispossess the plaintiffs of the property, build on it or otherwise arbitrarily deal with it and continue to harass the rightful sitting tenants and beneficiaries of their quiet enjoyment of the properties.

**3.5** Reference was also made to the case of **Gideon Mundanda Vs Mulyani and two others**<sup>3</sup> where it was held that damages cannot adequately compensate a party for the loss of land or an interest in a particular piece of land or of a particular house (however ordinary) as no two parcels of land are exactly the same. It was counsel's considered view that in *casu* damages would not suffice to compensate the plaintiffs and their respective families especially since the subject matter relates to real estate which holds both sentimental and economic value for them.

**3.6** The court was also referred to the case of **Horton Nove Vs Zambia Educational Company Limited**<sup>4</sup> where it was held that before the granting of an interlocutory injunction, it must be shown that there is a serious dispute between the parties and that the plaintiff must show on the material before the court that he has a real prospect of succeeding at trial.

Counsel argued that the plaintiffs have shown that they have a valid claim to the properties which is likely to be proved at trial and that there is a serious dispute

between them and the defendants. Further, that the plaintiffs dispute the validity of all or any of the certificates of title that may have been issued to the 1<sup>st</sup> defendant with or without approval from the 2<sup>nd</sup> defendant for having been issued fraudulently and with a sleight of hand as the 1<sup>st</sup> defendant has never been a sitting tenant on the subject properties or a beneficiary through the Development Committee.

#### **4.0 The 1<sup>st</sup> Defendant's Affidavit in opposition**

**4.1** The 1<sup>st</sup> defendant filed an affidavit in opposition on the 6<sup>th</sup> October, 2023 wherein he avers as follows: He was issued with a certificate of tile which does not relate to the area being claimed by the plaintiffs. He obtained title to Stand No. Kafue/LN\_26681/13 in extent 1007 square meters and measuring 31.03 meters by 33.67 meters. None of the defendants have stated the size of the plots which are alleged to be encompassed by his plot. He has no dealings or knowledge of the properties mentioned by the plaintiffs bearing plot numbers 4822 to 4865. He has since sold Stand No. Kafue/LN\_26681/13 to Kabika Nanyama who has obtained a title deed to the same as of 17<sup>th</sup> July, 2023.

#### **5.0 The defendant's skeleton arguments**

**5.1** In their skeleton arguments, counsel argued that the plaintiff have not demonstrated any clear right to relief which position of the law was emphasised in the case of **Shell & BP Zambia Limited Vs Conidaris and others**. Counsel argued that the plaintiffs in their Writ of Summons have sought, as their first relief for a declaration that all the properties in the entire Mwaleka Village belong to only 9 of them and yet their exhibit marked "JK1" purports to show about 60 interested parties. That only the 1<sup>st</sup> Plaintiff has exhibited a lapsed and invalid offer letter in respect of Stand No. 4849 which plot number is not amongst the properties highlighted in paragraph 1 of the statement of claim and is as such totally unrelated to the claim herein. Counsel was of the considered view that

the inclusion of Stand No. 4849 in the plaintiff's claim by way of the exhibit marked "JK3" was meant to mislead the court into believing that it is one of the plots in contention when in fact not. It was argued further that none of the other 8 plaintiffs have exhibited any offer in respect of the other plots that they are claiming were once offered to them by the 2<sup>nd</sup> defendant.

**5.2** It was counsel's firm view that this court has absolutely no reason to believe that the plaintiffs are entitled to plot numbers 4822, 4830, 4844, 4826, 4842, 4865, 4852 and 4831 Mwaleka Village because there is simply no document on record linking any of the 9 plaintiffs to these plots. Counsel submitted that for these reason, the right to relief was obscure.

**5.3** In making reference to the case of **Horton Ndove Vs Zambia Educational Company Limited**, counsel contended that in *casu*, there is no serious dispute between the parties and the plaintiffs have no prospect of succeeding in their claims against the 1<sup>st</sup> defendant. That this is because the 1<sup>st</sup> defendant is a deserving Zambian citizen who was allocated his plot by resolution dated 7<sup>th</sup> August, 2015 and there was nothing irregular about this allocation because the plaintiffs in their exhibit marked "JK4" acknowledge that at least 11 other plots could be allocated by the 2<sup>nd</sup> defendant to other deserving applicants. Counsel argued further that the property which was allocated to the 1<sup>st</sup> defendant is clearly described as Stand No. Kafue/LN\_266681/13 and it is nowhere near the plots allegedly owned by the plaintiffs as it does not even appear on their map marked "JK5". It was counsel's considered view that 8 or 9 portions of land belonging to 8 or 9 households could not possibly sit on a titled parcel of land measuring 31.03 meters by 33.67 meters in length and breadth. Consequently, the plaintiffs were clearly lost as to the location and extent of Stand No. Kafue/LN\_26681/13.

**5.4** By way of concluding their arguments, counsel argued that Stand No. Kafue/LN\_26681/13 is now owned by Kabika Nanyama as is evidenced by

exhibit "KL 3" in the 1<sup>st</sup> defendant's affidavit in opposition and that it was therefore not possible to grant an injunction against the 1<sup>st</sup> defendant who has no ownership rights of Stand No. Kafue/LN\_26681/13. The court's attention was drawn to the said exhibit which reveals that the said title deed was issued to Kabika Nanyama before the plaintiffs issued their letter of demand preceding this action. On this basis, counsel argued that the plaintiffs have no cause of action against the 1<sup>st</sup> defendant.

**5.5** Based on the foregoing arguments, counsel submitted that this was not a fit and proper case to grant an order of interim injunction and urged this court to dismiss this application with costs to the 1<sup>st</sup> defendant to be taxed in default of agreement.

## **6.0 The hearing**

**6.1** At the hearing, only counsel for the plaintiffs was present and after showing to the court that the defendants were aware of the hearing as an affidavit of service was filed, the court allowed counsel for the plaintiffs to proceed with the application.

**6.2** Counsel placed reliance on the affidavit in support of the application as well as skeleton arguments. It was counsel's contention that if the defendants are not restrained by way of an injunction, damages will not suffice to compensate the plaintiffs in the event that judgment is entered in their favour especially since the matter relates to the ownership of real estate as was held in the case of **Gideon Mundanda Vs Mulyani and two others**. Counsel argued that it was important to preserve the status quo until the determination of the matter and that even though the 1<sup>st</sup> defendant had filed an affidavit in opposition, he was not present before court and as such this court should not give too much gravity to the same.

## **7.0 The decision of the court**

**7.1** I am indebted to both counsel for their written arguments and the plaintiffs oral submissions which I have taken into consideration.

**7.2** In applying the principles of the law on granting injunctions to these facts, it is trite law that an injunction will only be granted where the right to relief is clear and is necessary to protect the plaintiffs from irreparable injury, mere inconvenience is not enough. The case of **Shell & BP (Zambia) Ltd Vs. Conidaris & Others** is instructive on this principle. The Supreme Court in that case stated:

*“A court will not generally grant an interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the plaintiff from irreparable injury, mere inconvenience is not enough. Irreparable injury means injury which is substantial and can never be adequately remedied or atoned for by damages....”*

**7.3** The plaintiffs have asserted that they have established a clear right to relief. I accept this assertion as well as the supporting arguments that were canvassed by counsel for the plaintiffs and counsel for the 1<sup>st</sup> defendant as it is evident that ownership of the subject property is a triable issue. Further it also needs to be ascertained whether there is an actual encroachment of the plaintiffs land as alleged.

**7.4** In relation to irreparable injury and whether damages can be an adequate remedy, it is well established that a claim for an interest in land negates the position that damages can be an adequate remedy as was held in the case of **Gideon Mundanda Vs Mulyani and two others** cited by the plaintiffs.

**7.5** The court has taken note that the 1<sup>st</sup> defendant has indicated in his affidavit that he no longer owns the land in issue as the same has been sold to

Kabika Nanyama and a certificate of title was exhibited to this effect. In view of this and so as to avoid a multiplicity of action, Kabika Nanyama is hereby joined to this cause of action as a 3<sup>rd</sup> defendant. The court has also taken note that there is an allegation of fraudulent acquisition of the certificates of title which will also need to be proved at trial.

**5.6** In view of the above, an injunction is hereby granted as against all the defendants pending the determination of this matter.

An order for directions will now be issued to settle the matter down for trial.

Delivered at Lusaka this 27<sup>th</sup> day of May 2024

